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HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

WRIT PETITION NO. 2902/2003

PETITIONERS
DEFENDANTS

1. Balluram,
S/O. Shivdayal,
Aged about 52 years,

2. Sheshlal,
S/O. Balluram,
Aged about 24 years,

Both R/O Village - Thuhadabri,
Tehsil: Ambagarh Chowki,
Distt. Rajnandgaon (C.G.)

VERSUS

RESPONDENT
PLAINTIFF

1. Pawan Kumar, S/o Late Dhaniram Gadhriya, Aged about 10 years, Represented by- Guardian Thakur Ram (Brother) R/o Hitaguta,
Police Station and Tehsil : Chowki,
Dist. Rajnandgaon(C.G.).

POST FOR ORDER ON 22. SEPTEMBER 2003

Sd/-
L.C. Bhadoo
Judge

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HIGH COURT OF JUDICATURE AT BILASPUR:CHHATTISGARH

WRIT PETITION NO. 2902/2003

PETITIONERS
DEFENDANTS

1. Balluram,
S/O. Shivdayal,
Aged about 52 years,

2. Sheshlal,
S/O. Balluram,
Aged about 24 years,

Both R/O Village - Thuhadabri,
Tehsil: Ambagarh Chowki,
Distt. Rajnandgaon (C.G.)

VERSUS

RESPONDENT
PLAINTIFF

1. Pawan Kumar, S/o Late Dhaniram Gadhriya, Aged about 10 years, Represented by- Guardian Thakur Ram (Brother) R/o Hitaguta, Police Station and Tehsil : Chowki, Dist. Rajnandgaon(C.G.).

Present: -

Mr. Anoop Majumdar , Advocate: For the petitioners.

Before: Hon'ble Shri Justice L.C. Bhadoo

O R D E R

(Passed on 22nd September, 2003)

1. The petitioners have preferred this writ petition under Article 226/227 of the Constitution of India, being aggrieved by the Order dated 14-08-2003, by which the District Judge, Rajnandgaon allowed the application of the plaintiff under

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Order XXXIII Rule 1 and 2 of the Code of Civil Procedure adjudging plaintiff Pawan Kumar as indigent person.

2. Facts leading to the filing of this writ petition are that respondent/plaintiff filed a civil suit through his guardian Thakur Ram before the learned District Judge, Rajnandgaon against the present petitioners for compensation of Rs.8,15,000/- as the mother of Pawan Kumar, the respondent/ plaintiff namely Pancho Bai on 12-05-98 went to the Mill of petitioner No.1 as a labourer; when she was working as a labourer in the hauler Mill of petitioner No.1 she met with an accident as her body was dragged into the hauler Machine on account of getting her sari entangled in the machine and she lost her life spontaneously. Therefore, respondent/Plaintiff filed a civil suit alleging that his mother lost her life on account of the negligence of the petitioners because proper security arrangements by covering the machine were not made by the petitioners and when his mother was working in the mill her sari got entangled in the machine of 15 horse power. In para 9 of the plaint it was mentioned that plaintiff Pawan Kumar is leading his life below the poverty line and he is not in a position to pay the Court fee. An application was also moved under Order XXXIII Rule 1 and 2 of C.P.C. read with Section

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35 of the Court Fees Act, in which it was mentioned that the plaintiff has filed a plaint for compensation as indigent person since the plaintiff is leading his life below the poverty line and the necessary documents were annexed with the application. It was further mentioned that Thakur Ram also leading the life below the poverty line and his yearly income is Rs.6,000/-. An objection was raised by the petitioners herein that the application is not in consonance with the Rule 2 and 3 of Order XXXIII. The certificate of the Sarpanch is not to the effect that the plaintiff is living below the poverty line and names of Thakur Ram and Pancho Bai are not registered in the Register of poor persons. However, learned District Judge vide impugned order after considering the arguments of both the parties observed that the plaintiff is seven years old and he has lost his mother and father and he has filed the plaint under the guardianship of his brother. It has been observed that it is not in dispute that a joint property of 6-7 Acres agricultural land is there in which the plaintiff has a share and ultimately he mentioned that the plaintiff is minor and his parents are not alive, therefore, the plaintiff is entitled for relaxation and ultimately application was allowed.

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3. Learned counsel for the petitioners submitted that the application must contain the schedule of property of movable and immovable and the application must be presented in person or by authorised agent who can answer all material questions relating to the application and who may be examined in the same manner as the party represented by him might have been examined had such party attended in person. Learned counsel further submitted that no notice has been given to the Government pleader, therefore, the procedure adopted by the learned sub-ordinate Court is not correct.

4. It is true that a perusal of the application does not reveal that any schedule of property of movable or immovable was annexed with the application and it does not appear that notice to the Government Pleader was issued. But these are the procedural irregularities. Paramount consideration for deciding the application under Order XXXIII Rule 1 and 2 to declare the plaintiff as indigent person so as to permit him to file the suit without Court fee is concerned, the Court must satisfy itself whether there is sufficient property or means with the plaintiff to file the Court fee. The plaintiff has filed the suit for claiming the compensation of Rs.8,15,000/-. The plaintiff is a minor and the plaintiff has joint share in the 6-7 Acres of the land and this 6-7 Acres of the land even partitioned between two brothers namely Sonu Ram and

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Dhaniram, 3.20 Acres fell in the share of each brother and after partition among the sons and daughters of Dhaniram, only 54 Decimal land fell in the share of plaintiff- Pawan Kumar. This is evident from the certificate given by the Sarpanch on 15-12-2000 and even the petitioners could not point out any other property or income in the name of the plaintiff. More over the fact that the mother of the plaintiff was working as labourer and on the date of incident mother of the petitioner had gone to the mill of the petitioners as a labourer, this fact itself shows that there was no source of income of the plaintiff or his mother and that is why his mother used to earn livelihood by working as labourer. This fact itself is sufficient for reaching the conclusion that the plaintiff was not in a position to pay the Court fee on the amount of Rs.8,15,000/-. Even if this irregularity which the learned counsel for the petitioners pointed out, in my opinion this irregularity, looking to the facts and circumstances of the case is not material which makes the impugned order illegal or perverse.

5. Now coming to the question of jurisdiction of this Court for interfering with the impugned order as this writ petition has been filed under Article 227 of the Constitution of India, the

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Hon'ble Apex Court while dealing with the supervisory jurisdiction of the High Court under Article 227 of the Constitution of India held in the matter of **Surya Dev Rai Vs. Ram Chander Rai and others**, reported in **2003 AIR SCW 3872** that certiorari jurisdiction though available is not to be exercised as a matter of course. The High Court would be justified in refusing the writ of certiorari if no failure of justice has been occasioned. In exercising the certiorari jurisdiction the procedure ordinarily followed by the High Court is to command the inferior Court or Tribunal to certify its record or proceedings to the High Court for its inspection so as to enable the High Court to determine whether on the face of the record the inferior Court has committed any of the preceding errors occasioning failure of justice. Certiorari under Article 226 of the Constitution of India is issued for correcting the gross errors of jurisdiction i.e. when a subordinate Court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction by over stepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no

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procedure specified, and thereby occasioning failure of justice, where the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law or grave injustice or gross failure of justice has occasioned thereby.

6. Therefore, in view of the above principle laid down by the Hon'ble Apex Court and what has been discussed above, I am of the opinion that the learned Sub-ordinate Court is not acted in any manner, which is flagrant violation of law and is not acted in a manner in which he has exceeded its jurisdiction. Therefore, in my opinion, no case is made out for interference by this Court under Article 227 of the Constitution of India. The writ petition is liable to be dismissed and accordingly, it is dismissed.

Sd/-
L.C. Bhadoo
Judge

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